

Supplemental Action

1. This action is response to phone discussion with Applicant's Attorney Tuenton Roche (Reg. # 61164) with respect to improper finality on claim 3 and its dependent claims filed on 16 February 2008. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. This action will reset the time clock for the Applicant.

Response to Amendment

2. This action is response to the Amendment filed on 29 October 2007. Claims 1 and 6 has been amended. Claim 2 has been canceled without prejudice or disclaimer. Accordingly, claims 1 and 3-8 remain pending.

Response to Arguments

3. Applicant's arguments and amendments with respect to claims 1, 2-8, filed on 29 October 2007 have been carefully considered but they are not deemed fully persuasive. Applicant's arguments are deemed moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 6-8 are rejected under 35 U.S.C. 101 because the claimed invention is to non statutory subject matter. The claims are directed to a computer program product embodied in a computer-readable storage device. However, according to page 14 lines

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5-9, the embodiment of the invention can be implemented in a propagated signal.

Accordingly, a computer program product embodied in a propagated signal is non-patentable subject matter. Therefore the claim as whole are found to be directed to a non-statutory subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1 and 2-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naik et al (Naik) (US 2006/0294238) in view of Burnett et al (Burnett) (US 2004/0225711).

Regarding claim 1, Naik discloses a network comprising: plurality of computer systems; and a plurality of manager services, each associated with one of the computer system

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(see par. 0048; figure 1; resource managers) the manager services handling at least locating, reserving, allocating, monitoring, and deallocating one or more computational resources, of the respective associated computer system; the manager services: (see par. [0025-0032]; key components of the present invention), upon receipt of a command requesting a resource, loading new instructions to modify original instructions residing in a computer system to modify the behavior of the one or more computational resources of the computer system (see par. 0013, 0024-0025; routing of grid client request to the best available grid resources); and reverting the new instructions in the computer system to the original instructions without restarting the computer system (see par. [0032]; grid resource management system and client management system).

Naik substantially discloses the invention as claimed above for the given reason however Naik does not disclose wherein said plurality of computer systems. However in the same field of invention Burnett discloses wherein said plurality of computer systems (see abstract, par. 0011; a grid manager computer and grid computers utilizing a communications network).

It would have been obvious to one of the ordinary skill in the art of networking to combine the teaching of Naik and Burnett for a maintainable grid Management system. Motivation for doing so would have been the system provides the users of the grid with option to select between various levels of computer security, performance, and availability in performing jobs submitted to the grid (see Burnett: par. 0009).

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Regarding claim 2 (Canceled).

Regarding claim 3, Naik discloses a method comprising: receiving a message having a command for a service that handles locating, reserving, allocating, monitoring, and deallocating one or more computational resources for an application running on a computer in a network (see par. [0025-0032]; client request manager, key components of the present invention); loading a first set of instructions from a location remote from the service in response to the command (see par. [0013-0014, 0128]; accessing remotely); replacing a portion of instructions for the service with the first set of instructions; and executing the service according to the first set of instructions (see par. [0034, 0036]).

Naik substantially discloses the invention as claimed above for the given reason however Naik does not disclose wherein said replacing a portion of instructions for the service with the first set of instructions. However in the same field of invention Burnett discloses wherein said replacing a portion of instructions for the service with the first set of instructions (see par. [0044]).

It would have been obvious to one of the ordinary skill in the art of networking to combine the teaching of Naik and Burnett for a maintainable grid Management system. Motivation for doing so would have been the system provides the users of the grid with option to select between various levels of computer security, performance, and availability in performing jobs submitted to the grid (see Burnett: par. 0009).

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Regarding claim 4, the limitations of this claim has already been addressed (see claim 3 above).

Regarding claim 5, Naik discloses the method of claim 3 further comprising: modifying a relationship between the service and a second service in response to the command (see par. [0124]), wherein the second service comprises locating, reserving, allocating, monitoring, and deallocating one or more computational resources for an application running on a computer in the network (see par. [0025-0032]; key components of the present invention).

Regarding claim 6, Naik discloses a computer program product tangibly embodied in a computer-readable storage device, the computer program product having instructions operable, when executed by a processor, to cause a data processing apparatus to perform a method, comprising (see pg. 1, par [0011]): receiving a message having a command for a service comprises locating, reserving, allocating, monitoring, and deallocating one or more computational resources for an application running on a computer in a network (see pg. 2-3, par. [0025-0032]; client request manager, key components of the present invention); loading a first set of instructions from a location remote from the service in response to the command (see par. 0013, 0024-0025; routing of grid client request to the best available grid resources); replacing a portion of instructions for the service with the first set of instructions; and executing the service according to the first set of instructions (see pg. 3, par. [0036]).

Naik substantially discloses the invention as claimed above for the given reason however Naik does not disclose wherein said a computer program product tangibly embodied in a computer-readable storage device and replacing a portion of instructions for the service with the first set of instructions. However in the same field of invention Burnett discloses wherein said a computer program product tangibly embodied in a computer-readable storage device (see par. 0013; a computer medium is disclosed that tangibly embodies a program of instructions) and replacing a portion of instructions for the service with the first set of instructions (see par. [0044]).

It would have been obvious to one of the ordinary skill in the art of networking to combine the teaching of Naik and Burnett for a maintainable grid Management system. Motivation for doing so would have been the system provides the users of the grid with option to select between various levels of computer security, performance, and availability in performing jobs submitted to the grid (see Burnett: par. 0009).

Regarding claim 7, the limitations of this claim has already been addressed (see claim 6 above).

Regarding claim 8, Naik discloses the computer program product of claim 6 wherein the computer program product is further operable to cause a data processing apparatus to modify a relationship between the service and a second service in response to the command (see par. [0124]), wherein the second service comprises locating, reserving, allocating, monitoring, and deallocating one or more computational resources for an

application running on a second computer in the network (see par. [0025-0032]; key components of the present invention).

Response to Arguments

6. Applicant's argument filed on 29 October 2007 have been fully considered but they are not persuasive. However, because there exists the likelihood of future presentation of this argument, the Examiners think it is prudent to address applicant's main point of contention. Applicant's argument includes:

a. Regarding claim 1, Applicant argues that Naik does not teach or suggest: "loading new instructions to modify original instructions residing in a computer system to modify the behavior of the one or more computational resources of the computer system; and reverting the new instructions in the computer system to the original instructions without restarting the computer system."

b. Regarding claim 3 and 6, Applicant argues that Naik does not teach or suggest: "loading a first set of instructions from a location remote from the service in response to the command; replacing a portion of instructions for the service with the first set of instructions; and executing the service according to the first set of instructions."

As for Point A, it is Examiner's position that Naik in view of Burnett disclose "loading new instructions to modify original instructions residing in a computer system to modify the behavior of the one or more computational resources of the computer system (see Naik: par. 0013, 0024-0025; routing of grid client request to the best available grid

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resources); and reverting the new instructions in the computer system to the original instructions without restarting the computer system (see Naik: par. [0032]; grid resource management system and client management system). Thus it is Examiners position that the 35 U.S.C 103 (a) rejection is proper.

As for Point B, it is Examiner's position that Naik in view of Burnett disclose loading a first set of instructions from a location remote from the service in response to the command (see Naik: par. [0013-0014, 0128]); replacing a portion of instructions for the service with the first set of instructions (see Burnett: par. [0044]); and executing the service according to the first set of instructions (see Naik: par. [0034, 0036]). Thus it is Examiners position that 35 U.S.C 103 (a) rejection is proper.

7. **Examiner's Note:** Examiner has cited particular paragraphs, figures, columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Conclusion

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8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see the form PTO-892 (Notice of Cited Reference) for a list of more relevant prior arts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to UMAR CHEEMA whose telephone number is (571)270-3037. The examiner can normally be reached on M-F 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Jr. Vaughn can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Uc

/William C. Vaughn, Jr./

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